

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE DAVID E. WASILENKO,

No. 170.

FIRST AMENDED NOTICE OF
FORMAL PROCEEDINGS

To David E. Wasilenko, a judge of the Yuba County Municipal Court from January 7, 1985, to April 16, 1999, and of the Yuba County Superior Court from April 16, 1999, to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

On September 11, 1999, Sheila Messick received a citation (No. KW23652) for violating Vehicle Code section 22349(b) (speeding) (case number YC MC IN-TR-99-0004777-001). Ms. Messick is the wife of your first cousin.

On September 24, 1999, you had an ex parte communication with Ms. Messick in your chambers in which you discussed with her what alternatives were available for disposing her citation. Although Ms. Messick's citation would not have come before you for any purpose in the ordinary course of judicial business, you called one of the traffic clerks, and asked that the citation be brought to your chambers. Ms. Messick was still present in your chambers when the clerk arrived with the citation. You imposed a fine and granted Ms. Messick's request to attend traffic school.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT TWO

On October 25, 1999, Heather Robinson received a citation (No. KW24867) for violating Vehicle Code section 4000(a) (expired vehicle registration) (case number YC MC IN-TR-99-0005495-001). Ms. Robinson previously lived with you and your family, and you have a close personal relationship with her. Ms. Robinson's citation would not have come before you for any purpose in the ordinary course of judicial business.

As a result of an ex parte communication, you called the supervisor of clerks for the traffic division on or about November 18, 1999, and told her to bring Ms. Robinson's citation to your chambers. No other person was present when the clerk arrived in your chambers. You wrote "dismissed as corrected" on the front of the courtesy notice and told the clerk to take care of the matter. The court file contains no evidence that the violation had been certified as corrected by law enforcement, the Department of Motor Vehicles, or any court clerk or deputy clerk, and Ms. Robinson was not required to pay the \$10 correction fee mandated by Vehicle Code Section 40611, subdivision (a).

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT THREE

On December 14, 1999, Casey Landis received a citation (No. 32972) for violating Vehicle Code section 22450 (running a stop sign) (case number YC MC IN-TR-99-0006249-001). You have known Mr. Landis since approximately 1986. He is a friend of your daughter and previously visited your house on several occasions.

The court appearance date on the citation was January 13, 2000. On that date, Mr. Landis appeared at the clerk's office and was granted a 60-day extension until March 13, 2000, to pay the \$127 fine for traffic school. Mr. Landis failed to appear in court or to pay the \$127 fine for traffic school by that date.

On or before March 14, 2000, Mr. Landis spoke to you ex parte about the citation, told you that he did not have the money to pay the fine, and asked if you could help him be assigned community service work in lieu of the fine. As a result of that communication, you called the clerk's office on March 14, 2000, and asked that the court file be brought to you in your chambers. In court on March 15, 2000, you accepted Mr. Landis' plea of guilty to a violation of Vehicle Code section 22450, and disposed of the matter by imposing, in lieu of fine, eight hours of community service as directed by you. You also granted Mr. Landis' request to attend traffic school and waived the \$24 fee for attending traffic school.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT FOUR

The allegations in count three are incorporated by reference.

On September 22, 2000, Casey Landis received a citation (No. 34165) for violating Vehicle Code section 24252(a) (malfunctioning vehicle light) (case number YC MC IN-TR-00-0003748-001). The court appearance date on the citation was October 26, 2000.

On October 24, 2000, the Yuba County Superior Court clerk's office granted Mr. Landis a 60-day extension to pay the bail amount of \$76, or provide proof of correction and a \$10 fee to the court. Mr. Landis failed to do either. On January 8, 2001, a hold was placed on Mr. Landis' license and bail was increased to \$114.

Meanwhile, on October 29, 2000, Mr. Landis received a citation (No. 34195) for violating Vehicle Code sections 16028(a) (failure to possess evidence of insurance) and 24252 (malfunctioning vehicle light) (case number YC MC IN-TR-00-0004071-001). The court appearance date on the citation was November 30, 2000. On November 28, 2000, the Yuba County Superior Court clerk's office granted Mr. Landis an extension until January 28, 2001, to pay the bail amount of \$550 or provide proof of correction and a \$20 fee to the court. Mr. Landis failed to do either. On February 9, 2001, a second hold was placed on Mr. Landis' license and bail was increased to \$825.

The September 22, 2000, and October 29, 2000, citations would not have come before you in the ordinary course of judicial business

On March 26, 2001, during an ex parte meeting with Mr. Landis in your chambers, you called for the citations to be brought to you. You then dismissed the violations as corrected, even though there was no proof of correction and no written evidence of financial responsibility. You also ordered that Mr. Landis complete a 16-hour work program as directed by you, and that both holds on Mr. Landis' license be released.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT FIVE

On August 10, 2001, Nathan Sokoloski received a citation (No. 39385) for driving with an open container of an alcoholic beverage and driving, while less than 21 years of age, while carrying an alcoholic beverage. The court appearance date on the citation was September 6, 2001.

On September 5, 2001, the Yuba County District Attorney's Office filed a criminal complaint charging Mr. Sokoloski with misdemeanor violations of Vehicle Code sections

23224(a) (driving, while less than 21 years of age, while carrying an alcoholic beverage) and 23225(a) (driving with an open container of an alcoholic beverage) (case number YC MC CR-TR-01-0001232-001). On September 6, 2001, Judge James F. Dawson continued Mr. Sokoloski's arraignment until September 12, 2001, in department 5.

As of September 2001, you had known Nathan Sokoloski for over ten years. You also knew his parents well. On or before September 11, 2001, you had an ex parte communication with Mr. Sokoloski or one of his parents. As a result of that communication, and although the case was not before you, you called for the matter to be heard in your chambers on September 11, 2001. You asked a prosecutor and the clerk to come into your chambers, and asked Attorney Jud Waggoman to come into chambers "as a friend of the court." Mr. Waggoman was not Mr. Sokoloski's attorney, and Mr. Sokoloski was not present. In chambers, you stated that you knew Mr. Sokoloski's family, and that you knew that Mr. Sokoloski was out of town. You also stated that the matter would be continued, and that you would notify Mr. Sokoloski that he was to attend a youth alcohol program. Notwithstanding the absence of Mr. Sokoloski or an attorney representing him, a time waiver was entered. The arraignment was continued to November 1, 2001.

Following another ex parte communication between you and Mr. Sokoloski or one of his parents, you again heard the matter in your chambers on September 20, 2001. Although a prosecutor was present, Mr. Sokoloski was not present and no attorney appeared on his behalf. You solicited the prosecutor's agreement to a continuance, and further continued the arraignment until March 5, 2002, "due to defendant's training schedule."

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 2B(2), 3B(7) and 3E.

COUNT SIX

The allegations in count five are incorporated by reference.

On August 10, 2001, Ryan Heenan, who was a passenger in the vehicle driven by Nathan Sokoloski, received a citation (No. 39150) for a misdemeanor violation of Vehicle

Code section 23224(b) (being a passenger in a motor vehicle under the age of 21 in possession of alcohol). The court appearance date on the citation was September 6, 2001.

On September 5, 2001, the Yuba County District Attorney's Office filed a criminal complaint charging Mr. Heenan with a violation of Vehicle Code section 23224(b) (case number YC MC CR-TR-01-0001232-003).

On September 6, 2001, Mr. Heenan failed to appear at his arraignment. Judge Dawson continued the arraignment until October 25, 2001, set bail at \$500, ordered that a warrant issue, and stayed execution of the warrant until October 25, 2001. On October 25, 2001, when Mr. Heenan again failed to appear, Judge Dawson dissolved the stay on the warrant. On October 30, 2001, the bench warrant issued and was delivered to the Marysville Police Department.

On or before November 5, 2001, Mr. Heenan met with you ex parte in your chambers. On November 5, 2001, even though the case was not before you, you called the clerk's office and asked that the court file be brought to your chambers. In your chambers, and without notice to or the presence of a prosecutor, you recalled the bench warrant without requiring that Mr. Heenan first be booked through the sheriff's office. You ordered Mr. Heenan released on his own recognizance, and continued the matter to December 17, 2001, for proof of completion of a youth alcohol program.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT SEVEN

The allegations in count five are incorporated by reference.

On August 10, 2001, Timothy Goetz, who was a passenger in the vehicle driven by Nathan Sokoloski, received a citation (No. 39386) for misdemeanor violations of Vehicle Code sections 23223(b) (being a passenger in a motor vehicle with an open container) and 23224(b) (being a passenger in a motor vehicle under the age of 21 in possession of alcohol). The court appearance date on the citation was September 6, 2001.

On September 5, 2001, the Yuba County District Attorney's Office filed a criminal complaint charging Mr. Goetz with violations of Vehicle Code sections 23223(b) and 23224(b) (case number YC MC CR-TR-01-0001232-002).

On September 6, 2001, Mr. Goetz appeared before Judge Dawson. Arraignment was continued to November 1, 2001, pending proof of completion of a youth alcohol program, and Mr. Goetz was released on his own recognizance. On November 1, 2001, Mr. Goetz failed to appear, and Judge Dawson ordered an arrest warrant on \$5,000 bail. On motion of the district attorney, the complaint was amended to add a charge that Mr. Goetz violated Penal Code section 1320(a) (failure to appear).

On November 2, 2001, apparently as a result of an ex parte communication that took place on or before that date, and even though the case was not before you, you arranged for the court file to be brought to you. As a result, the Goetz warrant was not sent to law enforcement.

On November 5, 2001, in your chambers and without notice to or the presence of a prosecutor, you released Mr. Goetz on his own recognizance, re-referred Mr. Goetz to the youth alcohol program, and continued the matter to December 17, 2001, for proof of completion of the program.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT EIGHT

On December 11, 2001, Anthony Franks received a citation (No. 36302) for a misdemeanor violation of Vehicle Code section 14601.1(a) (driving with a suspended license). The court appearance date on the citation was January 10, 2002. You have known Mr. Franks since approximately 1996, when he frequently visited your house. Mr. Franks was a friend of Heather Robinson, who is referenced in count two. Ms. Robinson once lived with you and your family and has a close personal relationship with you.

On December 21, 2001, the district attorney filed a criminal complaint charging Mr. Franks with a violation of Vehicle Code section 14601.1(a) (case number YC MC CR-TR-01-0001828-001).

When Mr. Franks failed to appear on January 10, 2002, Judge Dawson ordered that a bench warrant be issued and set bail at \$1,000. On or about January 17, 2002, Presiding Judge James L. Curry signed the bench warrant, which was delivered to the Marysville Police Department.

On March 6, 2002, while meeting with you ex parte in your chambers, Mr. Franks told you that he had an unresolved citation. Even though the case was not before you, you called the clerk's office and asked that the court file in this case be brought to your chambers. When the clerk arrived with the file, Mr. Franks was present in your chambers. In your chambers and without a prosecutor present, you recalled the bench warrant, without requiring that Mr. Franks first be booked through the sheriff's office, ordered Mr. Franks released on his own recognizance, and set a May 30, 2002, arraignment date.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT NINE

On June 14, 2002, Erin Porter received a citation (No. 42162) for violating Vehicle Code sections 22450(a) (failure to stop at a stop sign), 16028(a) (failure to possess evidence of insurance), and 4000(a) (expired registration) (case number YC MC IN-TR-02-0003545-001). The court appearance date on the citation was July 11, 2002. In approximately 2000 and 2001, Ms. Porter played on a softball team which you helped coach.

On July 11, 2002, Ms. Porter met with you ex parte in the courthouse and showed you her citation. Although Ms. Porter's citation was not assigned to you, you told her that you could take care of the matter. You contacted a clerk, and asked that the court file be brought to your chambers. Ms. Porter was present when the clerk arrived in chambers with the file. In chambers, you dismissed the "no insurance" and registration violations. Also in

chambers, Ms. Porter pled guilty or nolo contendere to the stop sign violation, and was assessed a fine of \$113. The court file contains no evidence that the registration violation had been certified as corrected by law enforcement, the Department of Motor Vehicles, or any court clerk or deputy clerk, and Ms. Porter was not required to pay the correction fee mandated by Vehicle Code Section 40611, subdivision (a).

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

COUNT TEN

On January 30, 1999, Kris Elayne Kraus received a citation (No. 29644) for violating Vehicle Code sections 4000(a) (expired vehicle registration) and 26700(a) (cracked windshield) (case number YC MC IN-TR-99-0000609-001). Ms. Kraus was a former neighbor of yours and you had been acquainted with her for several years.

The court appearance date on the citation was February 25, 1999. Ms. Kraus failed to appear on that date, and as a result a hold was placed on her license on March 23, 1999. On June 10, 1999, you had an ex parte communication with Ms. Kraus in your chambers regarding her citation. In chambers, you dismissed the charges and wrote “dismissed as corrected” on the front of the courtesy notice even though the citation reflected no proof of correction verified by law enforcement.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 3B(7) and 3E.

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial

Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to subdivision (b) of rule 14 of the California Rules of Court. The First Amended Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

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This First Amended Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 11/10/03

/s/
RISE JONES PICHON
CHAIRPERSON